

REMARKS

Claims 1–7 and 9 are pending in this application. Claims 1–3 and 5 are amended.

Claim 8 is cancelled. Claim 9 is new.

Claims 1–8 stand rejected under 35 U.S.C. 112, second paragraph. In light of the foregoing amendments, the Applicant hereby respectfully submits that the §112 rejection of the claims is now moot and should be withdrawn.

Claims 1–8 are rejected alternatively under 35 U.S.C. 102(b) as apparently anticipated or under 35 U.S.C. 103(a) as inherently obvious based on U.S. Patent No. 3,136,693 to Abeles. The Examiner states that Abeles appears to be identical to the presently claimed invention. The Examiner also states that, if not anticipated, the present invention is obvious because Abeles is likely to inherently possess the same characteristics of the claimed invention.

The Applicant herewith submits a Declaration under 37 CFR 1.132 by Dr. Uwe Gierlich that provides evidence that patentably distinguishes the present invention as claimed from Abeles. As established by Dr. Gierlich, a composition obtained using the average conditions described by Abeles (*i.e.*, extraction with ethanol 65% at a temperature of 70–80°C over 45 minutes), will contain at least 0.45% anthocyanins.

The evidence from Dr. Gierlich is supported by Abeles. As stated by Abeles at column 4, lines 60–61, “[t]he product according to the invention is defined by a high content of anthocyanosides.” While, the term “high-content” is not defined by Abeles, in column 4, lines 30–39, Abeles provides some unclear statements regarding absorption, extinction coefficients, and rates. Reasonably construed, Abeles states

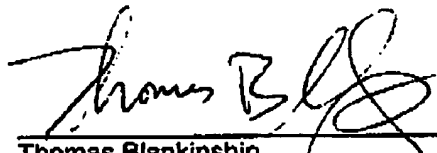
that "product 1" (for non-injectable pharmaceutical substances) contains .25% to 1% anthocyanins.

Unlike Abeles, the Applicant's composition as claimed in the present application comprises less than about .15% anthocyanins.

Therefore, Abeles does not provide or even suggest all the features of the present invention as claimed.

Claims 1-8 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of co-pending U.S. Patent Application No. 10/743,170. Applicants respectfully submit that, since the provisional double patenting rejection is the only rejection remaining in this application, the Examiner should withdraw the provisional double patenting rejection and permit this application to issue.

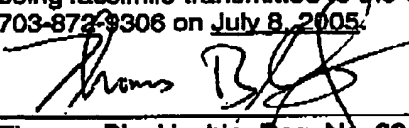
Respectfully submitted,



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